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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Modernize the :
Electric Grid for a High Distributed Energy : Rulemaking 21-06-017
Resources Future :

**COMMENTS OF THE CENTER FOR BIOLOGICAL DIVERSITY
ON THE ORDER INSTITUTING RULEMAKING TO MODERNIZE THE ELECTRIC GRID
FOR A HIGH DISTRIBUTED ENERGY RESOURCES FUTURE**

Pursuant to the California Public Utility Commission’s (“CPUC” or “Commission”) Order Instituting Rulemaking (“OIR”) , the Center for Biological Diversity (“Center”) hereby submits the following scoping comments.

As the OIR recognizes, California is working to transition the electricity sector to clean and renewable energy to combat the climate emergency. Distributed Energy Resources (“DER”) will play a critical role in this process. Indeed, the latest report from the Intergovernmental Panel on Climate Change (“IPCC”) demonstrates that California, among all national and sub-national governments, must work more rapidly across all sectors to transition away from the fossil fuel economy within the next few years to avoid global climate catastrophe.¹

At the same time, California’s clean and renewable energy transition poses new challenges to those communities who already are impacted most from various forms of energy violence caused by California’s majority centralized energy system. Although the practice has been temporarily suspended during the Covid-19 pandemic², California’s three private electric utility companies have a long history of disconnecting thousands of Californians who cannot afford their utility bills³, while simultaneously

¹ See IPCC, *Summary for Policymakers*, in CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS—CONTRIBUTION OF WORKING GROUP I TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE 36-41 (Valerie Masson-Delmotte et al. eds., 2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf [hereinafter *IPCC Report: Summary for Policymakers*].

² See Order Instituting Rulemaking to Address Energy Utility Consumer Bill Debt Accumulated During the COVID-19 Pandemic, R. 21-02-014, 2 (C.P.U.C. June 21, 2021), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K180/389180220.PDF>.

³ See, e.g., TURN, LIVING WITHOUT POWER, HEALTH IMPACTS OF UTILITY SHUTOFFS IN CALIFORNIA (2018), http://www.turn.org/wp-content/uploads/2018/05/2018_TURN_Shut-Off-Report_FINAL.pdf.

reaping millions of dollars in company profits and shareholder returns. This untenable *status quo* threatens the very communities that are already impacted by the cascading crises the climate emergency, Covid-19, and systemic racism.⁴

For these reasons, and as discussed further below, the Center recommends several adjustments to the scope of this proceeding. At its core, this proceeding presumes that even as California transitions to clean and renewable energy, the state will continue to rely on the same centralized private utilities that have been fueling the climate emergency and fossil fuel racism⁵ for decades. These companies will continue to be an obstacle to the energy future all Californians deserve, including and especially those on the front lines of the climate emergency and environmental racism—both of which are driven by the fossil fuel economy. Therefore, these comments outline several proposals for the Commission to start tackling the underlying issues that inhibit environmental, climate, and energy justice, as well as pathways for realizing energy democracy in the California energy system. Indeed, this transition offers a unique opportunity to build an energy system that is not only responsive to climate, but centered on addressing systemic social, racial, and ecological issues.

Discussion

A. The Proceeding Must Consider The Need For Utilities To Cover The Costs Necessary To Address The Climate Emergency, Which They Caused Through Decades Of Reliance On And Perpetuation Of The Fossil Fuel Economy.

In outlining potential approaches to bringing the benefits of DER to ESJ communities, the OIR ignores the responsibility of the utilities themselves for the climate emergency, and thus the role they should be required to play in addressing that emergency—including through the expansion of DER.⁶

⁴ See Jean Su, *Losing Power in the Time of COVID-19, Climate Change and Racism*, ROSA LUXEMBURG STIFTUNG (Sept. 20, 2020), <https://rosalux.nyc/utility-shut-offs/>.

⁵ See Tim Donaghy and Charlie Jiang for Greenpeace, Gulf Coast Center for Law and Policy, The Movement for Black Lives, and the Red, Black, and Green New Deal, “Fossil Fuel Racism: How Phasing Out Oil, Gas, and Coal can Protect Communities,” GREENPEACE (April 13, 2021), <https://www.greenpeace.org/usa/reports/fossil-fuel-racism/>.

⁶ Requiring utilities to fund this expansion would be consistent with the CPUC’s 2019 Environmental and Social Justice Action Plan, which called on the agency to improve services to ESJ communities, including building

For example, a major driver of anticipated electricity rate increases in California is the urgent need to address increasing wildfires caused by the climate crisis.⁷ However, these costs should be absorbed by *the utilities and shareholders themselves*, because the fossil-fuel electricity system that they created and chose to perpetuate is causing these very climate-induced harms. Indeed, it is well-documented that utilities—including California’s utilities—have known about the coming climate emergency for decades, while continuing to invest millions of dollars in fossil fuel infrastructure.⁸ Thus, utilities are now seeking higher rates of return to cover the recovery costs of the climate emergency that they created, with California utilities obtaining higher rates of return than their counterparts in other states.⁹

Accordingly, the CPUC should follow utility commissions in other states that are holding utilities accountable for the increased costs associated with responding to the climate emergency. For example, the Connecticut Public Utilities Regulatory Authority (“CPURA”) recently reduced a Connecticut utility’s return on equity as a result of that utility’s failed response to Tropical Storm Isaias.¹⁰ The CPURA also indicated that it would look skeptically at any future attempt by the utility to recoup \$230

out customer-side clean energy resources. *See* CPUC, ENVIRONMENTAL AND SOCIAL JUSTICE ACTION PLAN 15 (Feb. 2019).

⁷ *See* Herman K. Trabish, *California's dilemma: How to control skyrocketing electric rates while building the grid of the future*, UTILITY DIVE (Apr. 26, 2021), <https://www.utilitydive.com/news/californias-dilemma-how-to-control-skyrocketing-electric-rates-while-buil/597767/>.

⁸ *See, e.g.*, DAVID ANDERSON ET AL., ENERGY & POL’Y INST., UTILITIES KNEW: DOCUMENTING ELECTRIC UTILITIES’ EARLY KNOWLEDGE AND ONGOING DECEPTION ON CLIMATE CHANGE FROM 1968-2017 (2017), <https://www.energyandpolicy.org/utilities-knew-about-climate-change/>.

⁹ *See, e.g.*, Sammy Roth, *PG&E and Southern California Edison can’t raise profit margins, regulators decide*, L.A. TIMES, (Dec. 19, 2019), <https://www.latimes.com/environment/story/2019-12-19/pg-e-southern-california-edison-sdge-higher-profits-rejected>; Brad Plumer & Ivan Penn, *Climate Crisis Catches Power Companies Unprepared*, N.Y. TIMES, (July 29, 2021) <https://tinyurl.com/hdha5xs4>.

¹⁰ *See* Patrick Skahill, *Eversource ‘Failed Us’: PURA Imposes Strict Penalties For Tropical Storm Isaias Response*, CONN. PUBLIC RADIO (Apr. 28, 2021), <https://www.ctpublic.org/environment/2021-04-28/eversource-failed-us-pura-imposes-strict-penalties-for-tropical-storm-isaias-response>; *see generally* Investigation Into Electric Distribution Companies’ Preparation for and Response to Tropical Storm Isaias, No. 20-08-03 (Conn. Pub. Util. Reg. Auth., Apr. 28, 2021).

million in storm recovery costs from ratepayers.¹¹ And even in California, prosecutors have now determined that Pacific Gas & Electric should be criminally responsible for wildfire harms.¹²

The Center therefore proposes that, in considering appropriate programs to ensure that the benefits of California's high DER future can be shared with ESJ communities, the CPUC centrally consider the extent to which the utilities *themselves* should pay for these programs, through appropriate adjustments to their return on equity in coming years or other mechanisms that do not penalize customers for climate disasters they themselves are not responsible for. In short, utilities should not be able to pass along to consumers all the myriad costs necessary to respond to the climate crisis, but rather shareholders should fund investments in infrastructure like DER that is specifically targeted for deployment in low-wealth, ESJ, and other relevant communities that have been historically harmed by the fossil fuel economy and climate emergency.

B. The Proceeding Should Address The Reforms Necessary To Address The Obstacles That Utilities Pose To DER Expansion In California.

The OIR mentions changing utility incentive models and other approaches to address utility obstacles to expanding DER,¹³ but the Center recommends making these central issues in this proceeding. For reasons that have been well documented, utilities in California and across the country most often serve as *obstacles* to the expansion of DER, rather than as drivers of the DER transition.¹⁴ This is hardly surprising, since these for-profit private companies lose revenue when households and communities generate their own electricity in competition against utility-sold power.¹⁵

¹¹ See Skahill, *supra* note 10.

¹² *PG&E could face criminal charges over deadly California fire*, ASSOCIATED PRESS (July 30, 2021), <https://abcnews.go.com/US/wireStory/pge-face-criminal-charges-deadly-california-fire-79157812>.

¹³ See OIR, at 11-12.

¹⁴ See, e.g., J. DAVID LIPPEATT ET AL., ENV'T AM. RSCH. & POL'Y CTR., BLOCKING ROOFTOP SOLAR: THE COMPANIES, LOBBYISTS, AND FRONT GROUPS UNDERMINING LOCAL CLEAN ENERGY (2021); GREER RYAN, CTR. FOR BIOLOGICAL DIVERSITY, THROWING SHADE: 10 SUNNY STATES BLOCKING DISTRIBUTED SOLAR DEVELOPMENT (2016).

¹⁵ See Hiroko Tabuchi, *Rooftop Solar Dims Under Pressure From Utility Lobbyists*, N.Y. TIMES (July 8, 2017), <https://www.nytimes.com/2017/07/08/climate/rooftop-solar-panels-tax-credits-utility-companies->

The CPUC can no longer treat the fundamental tension between utility business models and DER expansion as a background issue that regulators can navigate gently. Rather, as revealed by the IPCC's latest report, the CPUC needs to adopt new approaches that fundamentally strip private utilities of their power to obstruct DER expansion. The OIR's Appendix B, which discusses Distributed System Operator Models and considers performance-based rate approaches, is a step in the right direction.¹⁶ However, the Commission needs to consider much broader questions at the root of bringing energy justice across California, including the expansion of DER in communities that have been historically excluded from DER because of lack of access to private capital.

For example, as detailed in a recent paper, the CPUC should consider how to most appropriately allocate grid costs—to the extent they are not borne by the utilities themselves, as discussed in Section A—progressively among all Californians, in the same manner as other essential services funded through general taxation.¹⁷ This could include funding the grid transition through general taxation, or incorporating income-dependent charges into utility rates.

More specifically, the CPUC should explore using general tax revenue to expand DER access—such as rooftop solar, community solar, and distributed storage—to ESJ communities across the state. For example, one key barrier for lower-income communities is that federal tax incentives like the Investment Tax Credit are only available to those with a sufficient tax burden to make the credit valuable.¹⁸ This leaves behind families who do not have sufficiently high income to benefit from the tax credit, or third-

[lobbying.html](#).

¹⁶ See Kavya Balaraman, *This is starting on the right path': Hawaii sees early successes with performance-based regulation*, UTILITY DIVE (July 29, 2021), <https://tinyurl.com/wvazsd62>; OIR, at 17 n.39 (discussing Hawaii model).

¹⁷ Severin Borenstein et al., *Designing Electricity Rates For An Equitable Energy Transition* (Energy Inst. at Haas, Working Paper No. 314, 2021), <https://haas.berkeley.edu/wp-content/uploads/WP314.pdf>; see also Lucas Davis & Catherine Hausman, *Who Will Pay for Legacy Utility Costs?* 42 (Energy Inst. at Haas, Working Paper No. 317, 2021) (discussing recouping utility costs from general tax revenue), <https://haas.berkeley.edu/wp-content/uploads/WP317.pdf>.

¹⁸ See TODD OLINSKY-PAUL, CLEAN ENERGY STATES ALL., SOLAR+STORAGE FOR LOW- AND MODERATE-INCOME COMMUNITIES: A GUIDE FOR STATES AND MUNICIPALITIES 27 (Mar. 2017), <https://www.cesa.org/resource-library/resource/solar-storage-for-low-and-moderate-income-communities-a-guide-for-states-and-municipalities>.

party community solar organizations that cannot convey tax credits back to the community.¹⁹ To address this problem, the CPUC should consider direct subsidies or grants that can improve access to capital to communities who cannot otherwise access these advantageous financial vehicles.

In sum, the proceeding should not simply assume the existing utility compensation model—and tinker around the edges. Instead, it should address the fundamental questions that must be confronted to ensure a high DER future is genuinely available to all and is deployed in manners that prioritize ESJ communities who have been harmed first and worst from the fossil fuel economy and climate. To advance the CPUC’s ESJ goals, this proceeding should take the broadest possible look at the best mechanisms to bring DER and affordable energy to *all* Californians through sustainable and equitable pathways.

C. The Proceeding Should Examine How The Commission Can Further Energy Justice By Addressing Energy Burden, Energy Insecurity, and Energy Poverty.

ESJ communities spend a significant percentage of their household income on energy (i.e., energy burden).²⁰ As a result, these same communities are regularly at threat of being unable to pay for electricity (i.e., energy insecurity), leading to eventual lack of access to energy (i.e., energy poverty).²¹ Indeed, there is a long and unfortunate history of utilities shutting off power for non-payment, further marginalizing these impacted communities.²² Accordingly, as the Commission works toward a high DER future, it must also consider the policy approaches necessary to ensure that all Californians retain access to electricity.

As a starting point, this should include an indefinite extension of the current utility shut-off moratorium. Given how central electricity is to every aspect of modern life, it is no longer tolerable or

¹⁹ *Id.*

²⁰ See LAUREN ROSS ET AL., AM. COUNCIL FOR AN ENERGY-EFFICIENT ECON., HOW HIGH ARE HOUSEHOLD ENERGY BURDENS? AN ASSESSMENT OF NATIONAL AND METROPOLITAN ENERGY BURDENS ACROSS THE U.S. (Sept. 2020), <https://www.aceee.org/research-report/u2006>.

²¹ *See id.*

²² See, e.g., GREER RYAN, CTR. FOR BIOLOGICAL DIVERSITY, POWER CRISIS: DESPITE TRANSPARENCY FAILURES, UTILITY INFORMATION REVEALS MAJOR HOME SHUTOFF PROBLEM (Mar. 2021); Chandelis Duster, *Utility shutoffs threaten a fresh crisis for low-income and Black families as Covid surges again*, CNN (July 12, 2020), <https://www.cnn.com/2020/07/12/politics/utility-shutoffs-coronavirus/index.html>.

ethically acceptable for utilities to deny any residents this fundamental human right.²³ Particularly in light of California's unprecedented budget surplus and the fact that California's top three utilities did not decrease shareholder returns during the pandemic, these private utility and state government coffers are more appropriate to draw from than people who have lost employment and suffered financial hardship due to the pandemic. Moreover, the CPUC should consider how DER can help to address these problems and enhance overall energy resilience of communities. In particular, since DER decreases reliance on grid-provided electricity and can be more affordable than centralized utility power, these resources should be a central element in assisting communities with the greatest difficulty paying utility bills.

The CPUC could also consider alternative energy pricing that considers the income level of ratepayers, and caps household electricity expenditures at a rate or energy burden percentage. A rate cap of, for example, six percent—after which energy cost becomes a significant financial burden²⁴—would also protect against unduly high energy burdens, and could be incorporated into programs designed to encourage DER investments in low-income homes.

Furthermore, the CPUC should also consider pricing and financing strategies that expand DER access for people with disabilities (PWDs), many of whom are also part of ESJ communities and share similar difficulties with energy burden, security and poverty. Specifically, PWDs are uniquely likely to suffer from energy poverty,²⁵ and electricity shutoffs can be deadly for PWDs that rely on in-home

²³ See, e.g., Stephen Tully, *The Human Right to Access Electricity*, 19 *The Electricity J.* 30 (Apr. 2006); MARCUS FRANKLIN ET AL., NAACP ENVIRONMENTAL AND CLIMATE JUSTICE PROGRAM, *LIGHTS OUT IN THE COLD: REFORMING UTILITY SHUT-OFF POLICIES AS IF HUMAN RIGHTS MATTER* iii (Mar. 2017) (“The need to incorporate human rights into the utility business model is a key component of the larger reform of the extractive energy economy and movement toward energy justice.”), <https://naacp.org/resources/lights-out-cold>.

²⁴ See AM. COUNCIL FOR AN ENERGY-EFFICIENT ECON., *UNDERSTANDING ENERGY AFFORDABILITY* 1 (2018), <https://www.aceee.org/sites/default/files/energy-affordability.pdf>.

²⁵ See Adrienne L. Thompson, *Protecting Low-Income Ratepayers As the Electricity System Evolves*, 37 *Energy L. J.* 265, 270 (2016) (citing data from the National Energy Assistance Directors' Association, which suggests that forty-two percent of federal energy subsidy recipients are PWDs); Pam Fessler, *Why Disability and Poverty Still Go Hand in Hand 25 Years After Landmark Law*, NPR (July 23, 2015), <https://www.npr.org/sections/health-shots/2015/07/23/424990474/why-disability-and-poverty-still-go-hand-in-hand-25-years-after-landmark-law> (noting that PWDs are twice as likely to be in poverty).

medical care.²⁶ According to the Department of Health and Human Services, there are at least 200,000 electricity-dependent Medicare beneficiaries in California alone, with more than 2.5 million nationwide.²⁷ And this data is undoubtedly under-inclusive, given that thousands of other PWDs in California are not on Medicare, or still rely on electricity to preserve medication or operate mobility equipment.²⁸

By improving access to DERs, the CPUC can improve energy reliability and reduce costs for PWDs. Although efforts to focus the Self-Generation Incentive Program on residents with “critical resiliency needs” are a good start,²⁹ the CPUC must do more to ensure that PWDs can afford distributed energy and storage resources.

D. The Proceeding Should Insure Appropriate Consultation With and Inclusion of ESJ Communities in All CPUC Decisions

Finally, on the Track 2 questions concerning consultation,³⁰ the Commission needs to expand its efforts to involve affected communities in these complex regulatory proceedings. As written, this proceeding will be limited to improving the “IOU distributed planning consultation processes.”³¹ The problem is that the Commission is relying on the utilities to include affected communities in energy transition discussions. Instead, the Commission should consider a separate public participation process, not reliant on the utilities, to allow true community input into these matters, including how to best advance DER penetration in ESJ communities. As one potentially useful model, the Federal Energy

²⁶ See generally MARRIELE MANGO & ANNIE SHAPIRO, RESILIENT POWER PROJ., HOME HEALTH CARE IN THE DARK: WHY CLIMATE, WILDFIRES AND OTHER EMERGING RISKS CALL FOR RESILIENT ENERGY STORAGE SOLUTIONS TO PROTECT MEDICALLY VULNERABLE HOUSEHOLDS FROM POWER OUTAGES (2019).

²⁷ See HHS *emPower Map*, HHS EMPOWER PROGRAM (Aug. 9, 2021), <https://empowerprogram.hhs.gov/empowermap>.

²⁸ See Vivian Ho, *California power shutoff: how PG&E's actions hit the medically vulnerable the hardest*, GUARDIAN (Oct. 11, 2019), <https://www.theguardian.com/us-news/2019/oct/11/california-pge-utility-power-shutoff-disabled>.

²⁹ See Self-Generation Incentive Program Revisions Pursuant to Senate Bill 700 and Other Program Changes, Decision No. 20-01-021, at 19 (C.P.U.C. Jan. 27, 2020).

³⁰ OIR, at 18.

³¹ *Id.*

Regulatory Commission recently launched an Office of Public Participation (“OPP”), and hosted hearings for affected community members to share input into how the OPP should operate.³²

* * *

Thank you for the opportunity to submit these scoping comments and we look forward to participating in this proceeding going forward.

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Respectfully submitted,

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³² See FERC, REPORT ON THE OFFICE OF PUBLIC PARTICIPATION (June 2021), <https://www.ferc.gov/media/ferc-report-office-public-participation>.